

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**KEVIN LEON SHARBUTT**  
Claimant

VS.

**LNU PIPE COMPANY, INC.**  
Respondent

AND

**EMPLOYERS INSURANCE OF WAUSAU**  
Insurance Carrier

AND

**KANSAS WORKERS COMPENSATION FUND**

Docket No. 181,169

**ORDER**

Claimant appeals from a Preliminary Hearing Order dated August 29, 1994 wherein Administrative Law Judge Steven J. Howard denied claimant's request for temporary total disability compensation.

**ISSUES**

On appeal, claimant argues that the Administrative Law Judge exceeded his jurisdiction by entering the appealed Order because the evidence established claimant's need for temporary total disability benefits and that the Appeals Board had previously remanded this matter to the Administrative Law Judge for purposes of entering an order for temporary total and medical benefits.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the entire record and considering the arguments of the parties, the Appeals Board finds as follows:

The Administrative Law Judge did not exceed his jurisdiction in entering his August 29, 1994 Preliminary Hearing Order. Claimant's appeal does not raise an issue from which an appeal may be taken at this juncture of the proceeding. Accordingly, the Appeals Board lacks jurisdiction to review the Order of the Administrative Law Judge.

The jurisdiction of the Appeals Board to review preliminary hearing findings is statutorily created by K.S.A. 44-534a(a)(2). This statute provides that the Appeals Board may review those preliminary findings of the following disputed issues: (1) Whether the employee suffered an accidental injury; (2) Whether the injury arose out of and in the course of the employee's employment; (3) Whether notice was given or claim timely made; and (4) Whether certain defenses apply.

Also, K.S.A. 44-551, as amended by Senate Bill 59 (1995), empowers the Appeals Board to review orders of the Administrative Law Judges where it is alleged they have exceeded their jurisdiction and authority.

K.S.A. 44-534a grants to the Administrative Law Judges the authority to conduct hearings and make preliminary orders on the issues of the furnishing of medical treatment and the payment of temporary total disability compensation. Here the Administrative Law Judge found that the claimant had not met his burden of proving that he was currently temporarily totally disabled, there being no current evidence indicating claimant was unable to engage in any substantial, gainful employment. The Administrative Judge further declined to order past temporary total disability benefits at this time.

Claimant asserts that the Administrative Law Judge exceeded his jurisdiction by failing to follow the mandate of the Appeals Board. On June 16, 1994, the Appeals Board made a finding for purposes of preliminary hearing and based upon the evidence then in the record that claimant had met his burden in showing a work-related injury. The March 15, 1994 Order of the Administrative Law Judge denying claimant benefits was reversed, and the matter was remanded to the Administrative Law Judge for further proceedings consistent with the Board's Order.

K.S.A. 44-534a(a)(2) provides in pertinent part that:

"Upon a preliminary finding that the injury to the employee is compensable and in accordance with the facts presented at such preliminary hearing, the administrative law judge may make a preliminary award of medical compensation and temporary total disability compensation to be in effect pending the conclusion of a full hearing on the claim. . . ."

It is significant that the statutory language states that the Administrative Law Judge "may," not that he "shall" order temporary benefits. The fact that the Administrative Law Judge herein declined to order a payment of past temporary total disability benefits is clearly within his authority and did not ignore or contravene the mandate of the Appeals Board upon remand. It should be noted that the Administrative Law Judge did accept additional testimony and received evidence into the record which was not a part of the record considered by the Appeals Board at the time of the June 16, 1994 Order. This, likewise, the Administrative Law Judge has the authority to do. Therefore, the Administrative Law Judge did not exceed his jurisdiction or authority in this matter.

Because the issues presented here are not one of those enumerated in K.S.A. 44-534a, nor did the Administrative Law Judge exceed his jurisdiction in authority in denying claimant's request, this matter is not reviewable by the Appeals Board at this juncture of the proceedings. Nothing herein is intended to comment upon the claimant's right to request a subsequent preliminary hearing to determine claimant's entitlement to benefits, nor are we commenting on the issue of claimant's entitlement to medical compensation or temporary total disability compensation at the conclusion of a full hearing on this claim.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the application for review should be, and is hereby, dismissed and the Order of Administrative Law Judge Steven J. Howard dated August 29, 1994 remains in full force and effect.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of August 1995.

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BOARD MEMBER

BOARD MEMBER

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BOARD MEMBER

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c: Patrick C. Smith, Pittsburg, KS  
Garry W. Lassman, Pittsburg, KS  
Leigh Hudson, Fort Scott, KS  
Steven J. Howard, Administrative Law Judge  
David Shufelt, Acting Director